

MUNICIPAL ORDER 19-2022

A MUNICIPAL ORDER AUTHORIZING THE SALE OF THE CITY OF OWENSBORO'S ONE-THIRD (1/3) INTEREST IN PROPERTY CONTAINING 24.58 ACRES LOCATED AT 4015 AIRPARK DRIVE AND AUTHORIZING THE MAYOR TO EXECUTE A REAL ESTATE PURCHASE AGREEMENT AND DEED CONVEYING THE PROPERTY TO R.L.R. INVESTMENTS, L.L.C.

WHEREAS, the City of Owensboro owns an undivided one-third (1/3) interest in 24.58 acres of vacant real property located at 4015 Airpark Drive, Owensboro, Kentucky, which is jointly owned by Economic Development Properties, Inc. (EDP). EDP has already approved the sale of its interest in the property to R.L.R. Investments, L.L.C.; and

WHEREAS, R.L.R. Investments, L.L.C. desires to purchase the City's interest and build on the property in furtherance of development of the City; and

WHEREAS, the conveyance by the City of the 24.58 acres of property at 4015 Airpark Drive will promote economic development within the City and the property should be sold or transferred in accordance with KRS 82.083(4)(b).

NOW, THEREFORE, BE IT ORDERED BY THE CITY OF OWENSBORO, KENTUCKY, AS FOLLOWS:

Section 1. In accordance with KRS 82.083(3), the Board of Commissioners makes the following determination:

- (1) The real property to be sold is a one-third (1/3) interest in 24.58 acres located at 4015 Airpark Drive.
- (2) The intended use for the property at the time of acquisition was to promote economic development by encouraging businesses to locate on the property.

(3) It is in the public interest to dispose of the property so that it can be used for a business purpose and return the property to the tax rolls for the benefit of the City.

(4) The property shall be conveyed for monetary consideration to R.L.R. Investments, L.L.C., for economic development purposes in accordance with KRS 82.083(4)(b).

Section 2. By and through the Board of Commissioners, the property listed in Section 1(1) above may be transferred, sold, or otherwise conveyed in accordance with KRS 82.083(4).

Section 3. That the City of Owensboro, Kentucky, by and through its Board of Commissioners, hereby approves the sale of its one-third (1/3) interest in 24.58 acres located at 4015 Airpark Drive in accordance with the terms of the attached real estate purchase agreement.

Section 4. That the Mayor, City Manager and appropriate staff members are hereby authorized to sign any and all real estate purchase agreements, deeds or other documents deemed necessary to the furtherance of the authority outlined herein.

INTRODUCED, PUBLICLY READ AND FINALLY APPROVED ON ONE READING, this the 17th day of May, 2022.

Thomas H. Watson, Mayor

ATTEST:

Beth Davis, City Clerk

REAL ESTATE PURCHASE CONTRACT

THIS REAL ESTATE PURCHASE CONTRACT (hereinafter, this "Contract"), is made as of this 26 day of October, 2021 (the "Effective Date"), by and between THE CITY OF OWNESBORO, KENTUCKY, and ECONOMIC DEVELOPMENT PROPERTIES, INC., (collectively the "Seller"), with a mailing address of 200 East Third Street, Suite 200, Owensboro, Kentucky 42303, and R.L.R. INVESTMENTS, L.L.C., an Ohio limited liability company, and/or assigns ("Buyer"), with a mailing address of Attn: Corporate Legal Department, 600 Gillam Road, Wilmington, Ohio 45177.

WITNESSETH:

WHEREAS, Seller is the owner of real property, which parcel Seller desires to sell to Buyer and Buyer agrees to purchase from Seller, upon the terms and conditions described herein.

NOW THEREFORE, for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00), the receipt and sufficiency being hereby acknowledged, the Buyer and Seller have agreed as follows:

1. Description

Seller agrees to sell and Buyer agrees to buy that certain real property consisting of 24.51 +/- acres of vacant land located at 4015 Airpark Drive, Owensboro, Daviess County, KY, with a parcel identification number of 004-24-11-019-N0-000, as reflected on the attached Exhibit "A" (the "Property"). A legal description will be finalized by a surveyor contracted by the Buyer as described in Section 5 (c) of this Contract

The Property shall include all of Seller's rights, privileges and easements appurtenant to the land and any improvements constructed thereon. Seller shall convey or cause all such rights to be conveyed to Buyer at closing, free and clear of all liens and encumbrances, with the exception of the Permitted Exceptions, as defined herein.

2. Purchase Price

a. The consideration for the Property shall be FORTY THOUSAND DOLLARS (\$40,000.00) PER ACRE multiplied by the number of acres as determined by the surveyor contracted by Buyer as described in Section 5(c) of this Contract, which the parties anticipate shall total approximately NINE HUNDRED EIGHTY THOUSAND FOUR HUNDRED AND 00/100 DOLLARS (\$980,400.00) (the "Purchase Price").

b. Buyer shall pay the Purchase Price to the Owner in the following manner:

- (1) Within FIVE (5) days of execution of this Contract by Buyer and Seller, Buyer shall remit an earnest money deposit in the amount of \$40,000.00 (the "Deposit") to Fidelity National Title Insurance Company, Attn: Angela Rice, 4111 Executive Parkway, Suite 304, Westerville, Ohio 43081, Telephone: 800.626.9881 (the "Escrow Agent").
- (2) At Closing, Buyer shall pay the balance of the Purchase Price by wire transfer or certified check, at Buyer's election.

3. Title Insurance

Buyer shall secure a title insurance commitment (the "**Commitment**") on the Property within FIFTEEN (15) days of the Effective Date, issued by the Escrow Agent, Fidelity National Title Insurance Company (the "**Title Company**") indicating that at Closing the Title Company will issue its Owner's Title Insurance Policy at standard rates in favor of Buyer in the amount of the Purchase Price, insuring marketable title to the Property, free and clear of all encroachments, liens, claims, encumbrances and restrictions, except for zoning restrictions of record which do not interfere with Buyer's intended use of the Property, Declaration of Covenants, Restrictions & Easements for MidAmerica Airpark, recorded in Deed Book 673, page 360 in the Daviess County Clerk's Office, taxes not yet due and payable and easements of record which do not interfere with Buyer's intended use of the Property (the "**Permitted Exceptions**"). Said title insurance policy shall be issued immediately upon the closing, showing good and marketable title to be vested in the Buyer.

If the Commitment discloses defects in title, Buyer shall notify Seller in writing and Seller at its election may remedy such defects in title within THIRTY (30) days of said notice. If Seller elects not to remedy such defect, Buyer, at Buyer's sole option, may elect to accept the Property with such defects and proceed to Closing or terminate the Contract and the Deposit shall be returned to Buyer and this Contract shall be null and void. If Seller elects to remedy such defects, but cannot remedy such defects in title on or before the date set forth in this Contract for Closing, Buyer may take one or more of the following actions:

- (a) grant Seller additional time to remedy such defects, thereby extending the Closing date;
- (b) complete the purchase and accept title as Seller is able to convey, unless such defects are delinquent real estate taxes or assessments or mortgages for an ascertainable amount placed against the Property by Seller at the time of Seller's acquisition of the Property, in which case that amount may be deducted from the Purchase Price and paid at Closing to remove such defect; or
- (c) declare this Contract null and void and, upon written notice to Seller, may terminate this Contract, in which event the Deposit, together with interest earned thereon, shall be refunded to Buyer. Upon making such refund, this Contract shall be deemed canceled, and neither party shall have any further claim against the other by reason hereof.

4. Representations and Warranties of Seller

The Seller makes the following representations:

- (a) Seller is the owner of the Property, with full power and authority to enter into this Contract and sell the Property based upon the terms and conditions herein;
- (b) There are no existing leases encumbering the Property.
- (c) Seller knows of no condemnation or eminent domain proceeding contemplated against the Property or any part thereof.

(d) Seller is not a party to any litigation affecting the Property or the Seller's right to sell the Property or any part thereof, and the Seller knows of no litigation or threatened litigation affecting the Property, or any part thereof.

(e) Seller has received no notice of any uncured violations of zoning, building, fire, safety or health codes with respect to the Property.

(f) Seller has no knowledge of any public improvements made or to be made, which would result in any assessments against the Property.

(g) Seller has no knowledge of any private improvements, which have been made on Property that would or could result in any mechanic's lien against the Property.

(h) Seller has not entered into any other transaction for the sale or lease of the Property.

(i) Seller has received no notice of environmental violations affecting the Property. Seller has no knowledge that Seller or the Property are in violation of applicable federal, state and local laws, administrative rulings, regulations and regulatory approvals relating to the protection of the environment. To Seller's knowledge, no uncured violation of any licenses, permits, approvals, franchises or authorizations has occurred in the past ten (10) years, and no proceeding is pending or threatened that may result in revocation or limitation of any of those licenses, permits, approvals, franchises or authorizations affecting the Property.

(j) Seller has received no notification that it is a potentially responsible party under section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"). Seller has not received notification from any state or local government under any similar provisions of state or local law.

(k) To Seller's knowledge, no toxic, explosive or otherwise "hazardous substance," as that term is defined in Section 101(14) of CERCLA, or petroleum (including crude oil or any fraction thereof) has been discharged, deposited, dumped, spilled, leaked or placed into, on or under the Property at any time after the date Seller acquired title to the Property in violation of law.

The representations and warranties shall be effective as of the Effective Date and as of Closing and shall survive Closing.

5. License to Inspect

(a) Seller does hereby grant to Buyer, its agents, employees, contractors and representatives, during Buyer's Due Diligence Period (as defined herein below), the right and license to go upon the Property to inspect the same. Inspections shall be made at Buyer's sole cost and expense, and at Buyer's sole discretion may include topographical surveys, test borings, percolation tests, environmental tests, inspections, soil analysis and any other tests or investigations which will assist Buyer in determining whether the Property is suitable for Buyer's purposes and whether any adverse environmental conditions exist on the Property. The Property shall be left in the same condition as it was prior to such testing, borings, and/or surveying. Buyer shall indemnify Seller for any damage caused by Buyer, its agents, employees, contractors or representative in performing such due diligence, including, but not limited to, any liens, claims, losses and liabilities arising out of Buyer exercising such right and privilege to go upon the Property and reimbursing Seller (or the lessee of farming rights to the Property, as designated by Seller) for any damage to crops growing on the Property. Buyer shall, prior to entry upon the Property, provide Seller with

evidence of adequate liability insurance, naming Seller as an additional insured. Buyer shall provide Seller with a copy of any documents/reports generated from their investigation of the Property.

(b) Buyer shall have a period of ONE HUNDRED EIGHTY (180) days (the “**Due Diligence Period**”) from the date this Contract is executed by both parties, to make its investigations of the Property. Upon execution of this Contract by both parties, Buyer shall act expeditiously to retain any experts or consultants needed in connection with its investigations of the Property and will proceed diligently to complete its evaluation. In the event of the discovery of any quantity of contaminants or other adverse conditions on the Property, irrespective of the source, or if Buyer determines for any reason that the Property is not suitable for Buyer’s intended use, Buyer may upon written notice to Seller, terminate this Contract, in which event the Deposit, together with interest earned thereon, shall be returned to Buyer, and Seller shall have no further claim or demand against the Buyer by reason of the termination, or Buyer shall send notice to Seller identifying the contaminants or adverse environmental condition and establishing a time frame within which Seller may remediate the condition(s) to Buyer’s satisfaction.

(c) Buyer at its sole cost and expense may have the Property surveyed by a licensed surveyor acceptable to Buyer. The plat of the survey shall show all recorded easements and physical encroachments and shall be certified to Buyer and its title insurance company. Buyer shall provide a copy of the survey to Seller. The surveyor shall prepare a final legal description of the Property, which legal description shall be referenced on the general warranty deed provided by the Seller at Closing and insured by the Title Company.

6. Provisions Facilitating Buyer's Due Diligence

Within TEN (10) business days after the Effective Date, Seller shall furnish to Buyer the following documentation, if within Seller's custody or control:

(a) Any geotechnical, environmental or other engineering reports, including any boundary, topographical or wetland survey of the Property.

(b) Any correspondence from any governmental agencies regarding any alleged violation of any applicable law to the Property. Seller hereby confirms, as of the Effective Date, Seller has received no violation of any applicable law in regard to the Property.

(c) All utility and tax bills from the preceding and current year on the Property.

(d) Any policy of title insurance Seller has obtained on the Property.

(e) Any environmental report on the Property, including but not limited to any phase I report, phase II report and/or any analytical testing.

Purchaser agrees that Seller makes no warranty or representation as to the accuracy or completeness of any of the information it provides to Purchaser, and Seller shall have no liability to Purchaser or any of its representatives, successors or assigns relating to or arising from Purchaser’s reliance upon or use of this information. Purchaser agrees to keep all such information confidential and to not disclose it to any third party or use the information for any purpose other than its investigation of the Property.

In the event Seller fails to produce the documentation stated herein in a timely manner, Buyer may, at Buyer's sole discretion, extend the Due Diligence Period by the number of days

Seller is late in providing the documentation. If Seller fails to produce the documentation as stated herein, Buyer may terminate this Contract, receive a refund of the Deposit, and pursue all remedies available to Buyer.

7. Closing

Closing shall take place FIFTEEN (15) days after the expiration of the Due Diligence Period or the Extended Due Diligence Period as may be applicable (the "Closing Date" or "Closing"), provided Closing shall not take place before all the foregoing terms and conditions of this Contract have been satisfied. The Closing shall take place at a location and in a manner mutually acceptable to Seller and Buyer. If the Closing Date, or any other target date, falls on a holiday or weekend, the Closing Date, or target date, shall fall on the next business day after the holiday or weekend day. At Closing, Seller shall deliver exclusive possession of the Property to Buyer.

8. Management Pending Closing

Seller shall be responsible from the Effective Date until the Closing Date, for the following:

(a) To maintain the Property in substantially the same condition as of the Effective Date herein.

(b) To manage the Property in a responsible manner, consistent with the management prior to this Contract.

(c) To insure the Property in commercially reasonable amounts and with commercially reasonable deductible.

(d) Not to enter into any contract or agreement that would encumber the Property after Closing without Buyer's consent.

(e) To advise Buyer of any action or claim concerning the Property.

9. Conveyance

Seller shall convey the Property by transferable and recordable, General Warranty Deed, with the Property being transferred free and clear of all liens and encumbrances, rights of dower or other legal restrictions, except as otherwise stated in this Contract except for the Permitted Exceptions, or as agreed to by Buyer after review of the Commitment and survey.

10. Documents to be Delivered By Seller for Closing

Documents delivered shall include, but shall not be limited to:

(a) General Warranty Deed, or its equivalent, executed, acknowledged and delivered by Seller to Buyer at Closing conveying title to the Property;

(b) Any necessary documentation to permit the issuance of an owner's policy of title insurance, under the terms and conditions of this Contract to issue;

(c) Closing statement;

(d) Seller shall execute and deliver to the other party a FIRPTA Affidavit substantially in the form of Exhibit "B" attached hereto; and

(e) Owner's Affidavit, customarily requested by the Title Company, for consummation of this transaction.

At closing, Seller shall prorate the current real estate taxes for the property and pay all delinquent real estate taxes or other assessments, including penalties and interest, and shall pay all other real estate taxes which are due and payable. The respective parties' costs associated with this transaction shall be as follows: SELLER – The deed preparation, all conveyance or transfer fees, the cost of discharging any mortgage on the Property, and Seller's attorney's fees. BUYER – The cost of a survey, title search and examination fees, the premium for the owner's policy of title insurance in the amount of the Purchase Price, closing fee, Buyer's Broker commission, recording fees on deed, any environmental investigations, any endorsements to the owner's policy of title insurance Buyer desires, and Buyer's attorney fees. All other escrow and closing costs shall be allocated equally between the parties as is customary in Daviess County, Kentucky, as determined by Escrow Agent, however Buyer's share of these costs shall not exceed \$500.00. No funds shall be distributed at Closing and the General Warranty Deed shall not be recorded until Buyer, Seller and Escrow Agent have executed a mutually agreeable Closing Instruction letter.

11. Default

If Seller fails or refuses to consummate the sale of the Property pursuant to this Contract for any reason, Buyer shall have the option, in addition to pursuing any of its rights and remedies at law or in equity, of: (i) enforcing specific performance of this Contract; or (ii) terminating the Contract upon written notice to the Seller and escrow agent. If Buyer fails or refuses to consummate the purchase of the Property pursuant to this Contract for any reason, other than a permitted reason within this Contract, Seller shall retain the Deposit as liquidated damages as Seller's sole and exclusive remedy.

12. Notices

All notices related to this transaction shall be deemed to be effective when mailed, postage prepaid by United States, certified or registered mail, return receipt requested, or delivered by personal delivery, telegram or express courier service, email or by telecopier to the numbers listed below:

BUYER:

R.L.R. INVESTMENTS, L.L.C.
Attn: Corporate Legal Department
600 Gillam Road
Wilmington OH 45177
FAX: (937) 383-2336
Email: ddeluca@rlrlc.com

SELLER:

THE CITY OF OWENSBORO
Attn: Thomas H. Watson, Mayor
101 E. 4th Street, P.O. Box 10003
Owensboro, KY 42303
FAX: (270) 687-8585
Email: mayor@owensboro.org

With a copy to:
Donald R. DeLuca
7340 N. US Highway 27
Ocala, FL 34482
FAX: (937)655-5361
Email: ddeluca@rlrlc.com with a copy to
janna.ward@rlrlc.com

With a copy to:

Nate	Pagan,	City	Manager
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101 E. 4th Street, P.O. Box 10003
Owensboro, KY 42303
FAX: (270) 687-8585
Email: nate.pagan@owensboro.org

ECONOMIC DEVELOPMENT
PROPERTIES, INC.
Attn: Brittaney Johnson
200 East Third Street, Suite 200
Owensboro, Kentucky 42303
bjohnson@owensboro.com

With a copy to:

R. Michael Sullivan, Esq.
Sullivan Mountjoy, PSC
100 St. Ann Street
Owensboro, KY 42303
(270) 683-6694 – Fax
Msullivan@smlegal.com - Email

13. Brokerage

The parties acknowledge that no real estate agent, broker or company has been used in this transaction other than Burr & Temkin (“**Buyer’s Broker**”). Seller shall indemnify, hold harmless and defend Buyer against any claim initiated by any broker, agent or real estate company contacted by, representing or claiming to represent Seller on the Property and claiming any real estate fee arising out of, related to, or involved in this transaction. Buyer shall indemnify, hold harmless and defend Seller against any claims initiated by any other agent, broker or real estate company contacted by or representing Buyer for any real estate fee arising out of, or in any way related to this transaction. These reciprocal indemnities shall include the costs of discharging any lien and the cost of defending any litigation, including reasonable attorney’s fees (the party to be indemnified shall have the right to choose its own counsel).

14. Governing Law, Jurisdiction in Venue

The provisions and covenants contained in this Contract shall be governed and construed under the laws of the State of Kentucky. By executing this Contract, the parties irrevocably consent to the exclusive jurisdiction and venue of the state or federal courts located in Daviess County,

Kentucky, for any action or suit arising from or related to this Contract.

15. Joint Preparation

The preparation of this Contract has been a joint effort of the parties and the resulting documents shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

16. No Recording

Neither party shall record this Contract or a memorandum of this Contract. If either party attempts to record this Contract or a memorandum of this Contract, the non-recording party may terminate this Contract without further liability to the recording party.

17. Like-Kind Exchange

Prior to or simultaneously with the Closing hereof, Seller or Buyer may wish to execute an assignment and transfer of either party's interest in this Contract and the Property to a third party for the purpose of effectuating an exchange of the Property for other Like-kind Property. Each party agrees to cooperate with the other in this exchange of the Property for other like-kind Property. Each party agrees to cooperate in this exchange, provided the third party Assignee of either party's interest shall perform that parties obligations with respect to the conveyance of the Property, and further provided that said exchange shall in no way cause any expense to the other party which would have not incurred had said change not taken place.

18. Entirety of the Agreement

This Agreement consists of these typewritten pages and Exhibits incorporated by reference herein. There are no other agreements, conditions or understandings between the parties. All understandings and agreements heretofore have been merged into this Contract, which fully and completely expresses the agreement of the parties.

19. Assignment

Neither party may assign this Contract without the written consent of the other party, except that Buyer may assign its rights under the Contract to an Affiliate of Buyer, but with notice to Seller. "Affiliate" shall mean any individual, corporation, partnership, limited partnership, limited liability company, or other entity controlling, controlled by, or in common control with Buyer. No such assignment by the Buyer shall affect or diminish the obligation of the Buyer to perform its obligations under the Contract, and Buyer shall remain primarily liable hereunder.

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IN WITNESS WHEREOF, intending to be legally bound, the parties warrant that they have the authority to execute this document and legally bind their respective corporation to the terms and conditions contained herein.

(SELLER):

THE CITY OF OWENSBORO

By: Thomas A. Watson

Thomas A. Watson, Mayor

ECONOMIC DEVELOPMENT PROPERTIES, INC.

By: B. Dean Stanley
B. Dean Stanley, Vice President

(BUYER):

R.L.R. INVESTMENTS, L.L.C.

By: Donald R. DeLuca
Donald R. DeLuca
Vice President and General Counsel

EXHIBIT A

SKETCH OF THE PROPERTY

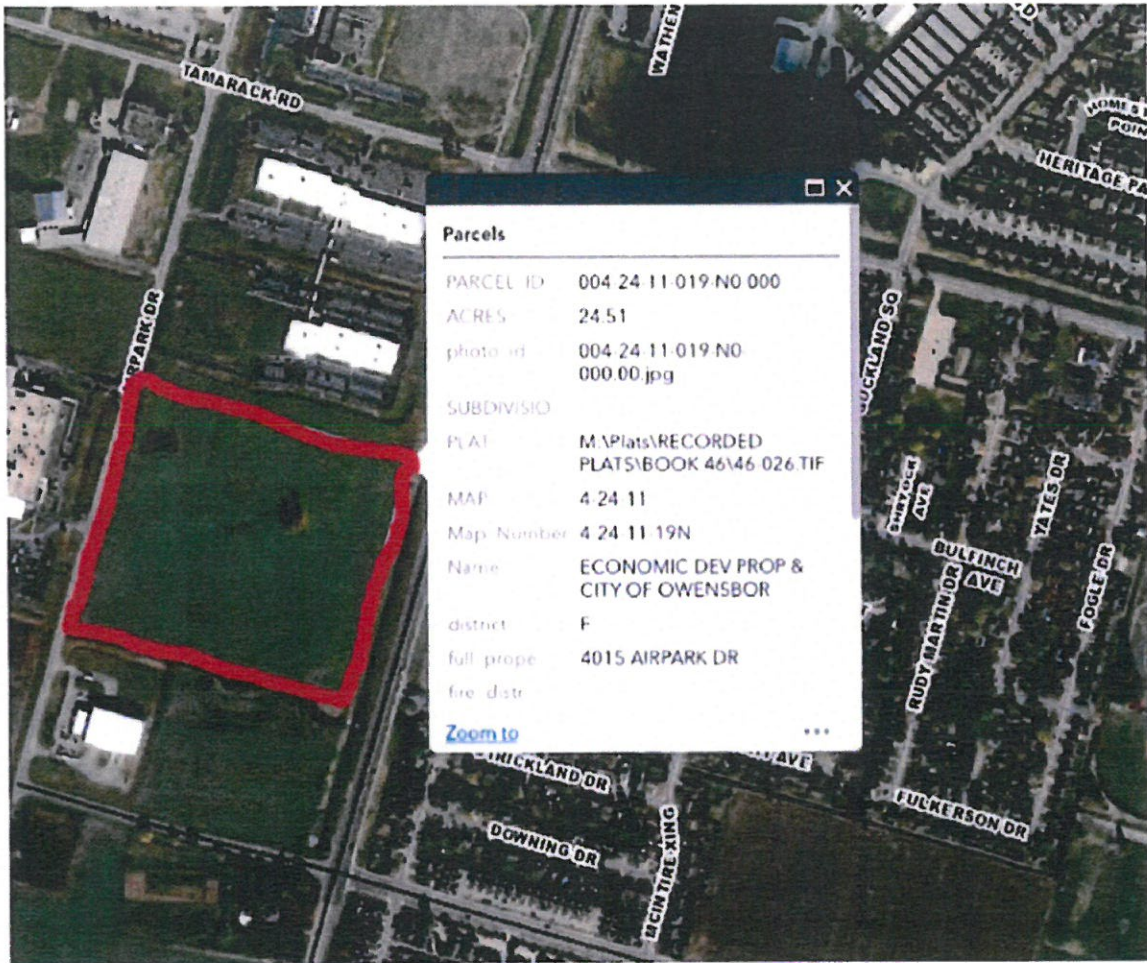


EXHIBIT B

FORM OF FIRPTA AFFIDAVIT

TRANSFEROR'S CERTIFICATION OF NON-FOREIGN STATUS

To inform **RAMAR Land Corporation** ("Transferee"), that withholding of tax under Section 1445 of the Internal Revenue Code of 1986, as amended (collectively, the "Code"), will not be a required transfer of certain real property to Transferee by _____, the undersigned hereby certifies the following on behalf of Transferor:

1. Transferor is not a foreign person, foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Code and the Income Tax Regulations promulgated thereunder).

2. Transferor's U.S. taxpayer identification number is as follows: _____.

3. Transferor's office address is as follows:

Transferor understands that this Certification may be disclosed to the Internal Revenue Service by Transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Transferor understands that Transferee is relying on this Certification in determining whether withholding is required upon said transfer.

Under penalty of perjury I declare that I have examined this Certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of Transferor.

TRANSFEROR:

Dated: _____, 2021

By: _____
Printed Name: _____
Title: _____